

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of

Petition of Intrado Communications of Virginia Inc.
 Pursuant to Section 252(e)(5) of the Communications
 Act for Preemption of the Jurisdiction of the Virginia
 State Corporation Commission Regarding Arbitration
 of an Interconnection Agreement with Verizon South Inc.
 and Verizon Virginia Inc. (collectively, "Verizon")

WC Docket No. _____

FILED/ACCEPTED

JUL 18 2008

Federal Communications Commission
 Office of the Secretary

PETITION OF INTRADO COMMUNICATIONS OF VIRGINIA INC.

Intrado Communications of Virginia Inc. ("Intrado Comm"), by its attorneys, hereby respectfully requests that the Federal Communications Commission ("Commission") preempt the jurisdiction of the Virginia State Corporation Commission ("VSCC") in order to arbitrate the pending interconnection issues between Intrado Comm and Verizon South Inc. and Verizon Virginia Inc. (collectively, "Verizon"). This petition arises from the VSCC's decision to defer Intrado Comm's request for arbitration against Verizon to this Commission.^{1/} In light of that deferral, Intrado Comm requests that the Commission expeditiously assume jurisdiction and arbitrate Intrado Comm's interconnection agreement with Verizon pursuant to the Commission's authority under Section 252(e)(5) of the Communications Act of 1934, as amended ("Act")^{2/} and Section 51.803 of the Commission's rules and regulations.^{3/}

^{1/} Case No. PUC-2008-00021, *Petition of Intrado Communications of Virginia Inc. for Arbitration to Establish an Interconnection Agreement with Verizon Virginia Inc. and Verizon South Inc. under Section 252(b) of the Telecommunications Act of 1996*, Order of Dismissal (Va. S.C.C. June 16, 2008) ("*Virginia Order*") (Attachment 2).

^{2/} 47 U.S.C. § 252(e)(5).

^{3/} 47 C.F.R. § 51.803.

BACKGROUND

Intrado Comm is authorized to provide competitive local exchange services in the Commonwealth of Virginia.^{4/} In addition to other local exchange services, Intrado Comm seeks to offer public safety answering points ("PSAPs") and other public safety agencies a competitive alternative to the incumbent 911 network and services. Similar to any other competitive local exchange carrier, Intrado Comm must interconnect its network with incumbent local exchange carriers ("ILECs") that control access to the public switched telephone network ("PSTN") and have connections with and provide services to PSAPs and other end users.

To achieve the interconnection and interoperability between carrier networks needed for the provision of 911/E911 services, Intrado Comm requested interconnection from Verizon in May 2007.^{5/} Verizon proposed using its template interconnection agreement to start the Parties' interconnection negotiations. After several email exchanges and an initial meet-and-greet conference call, Intrado Comm provided Verizon with an initial mark-up of the template agreement in September 2007 and additional revisions in October 2007.

On January 16, 2008, Verizon provided a response to the Intrado Comm September and October drafts. Verizon also noted its position that Intrado Comm may not be eligible for interconnection pursuant Section 251(c) of the Act for all of the services intended to be offered by Intrado Comm. Intrado Comm sent back a revised draft in February 2008. Subsequently, the Parties held several conference calls to discuss Intrado Comm's proposed revisions. The Parties were able to resolve several issues during the calls, and each Party agreed to "take back" many other issues for further consideration. After providing Verizon with the results of its "take back"

^{4/} Case No. PUC010212, *Application of Intrado Communications of Virginia Inc. for Certificates of Public Convenience and Necessity to Provide Local Exchange and Interexchange Telecommunications Services*, Final Order (Mar. 20, 2002) (granting Intrado Certificate of Public Convenience and Necessity No. T-578).

^{5/} Affidavit of Thomas Hicks, Director-Carrier Relations (attached as Attachment 1).

issues, Intrado Comm provided Verizon with a further revised draft in early March 2008.

Verizon did not provide Intrado Comm with a response to Intrado Comm's proposed language or responses to any of the Verizon "take back" issues from the February conference calls.

Given Intrado Comm's need to obtain interconnection arrangements in order to rollout its service offerings, Intrado Comm filed a Petition for Arbitration with the VSCC on March 5, 2008.⁶¹ Intrado Comm's Petition for Arbitration designated as an issue for arbitration whether Intrado Comm is entitled to Section 251(c) interconnection and Section 252 arbitration along with all other substantive issues raised by the Verizon template interconnection agreement.

On March 31, 2008, Verizon filed its Response to Intrado Comm's Petition for Arbitration as well as a Motion to Hold in Abeyance Intrado Comm's Petition for Arbitration. Verizon later withdrew its Motion to Hold in Abeyance pending the Parties' agreement to stay the arbitration period for 60 days to allow for further negotiations between the Parties. During that 60-day period, the Parties were able to resolve an additional thirteen (13) issues.

The VSCC issued a decision on June 16, 2008. In the *Virginia Order*, the VSCC deferred the issue of whether Intrado Comm is entitled to Section 251(c) interconnection (as well as all other issues designated for arbitration by Intrado Comm) to this Commission. Specifically, the VSCC stated:

In this case, we find there is a threshold issue that should be determined by the FCC. Therefore, we believe the FCC is the more appropriate agency to determine whether Intrado is entitled to interconnection pursuant to § 251(c) of the Telecommunications Act. . . . We note that until such time as the threshold jurisdictional issue is resolved, it would be inappropriate to resolve

⁶¹ For purposes of the statutory deadlines, there is agreement among the Parties that interconnection negotiations commenced on September 27, 2007, resulting in the state commission arbitration window opening on February 9, 2008 and closing on March 5, 2008. Intrado Comm also filed petitions for arbitration against Verizon entities in Delaware, Maryland, Florida, Ohio, West Virginia, and North Carolina.

the other disputed issues. Therefore, we will defer resolution of all issues in Intrado's Petition to the FCC.^{7/}

In addition, the VSCC found that Intrado Comm's request for arbitration with respect to Verizon raised the same issues as Intrado Comm's request for arbitration to Embarq, for which the FCC has now assumed jurisdiction.^{8/} Indeed, the VSCC explicitly determined that "[n]othing distinguishes the jurisdictional nature of [the Verizon] arbitration petition from the Embarq matter above. The FCC has initiated its proceeding to resolve the threshold issue in the Embarq matter, and should be able to apply a similar determination for these two parties."^{9/} The VSCC has determined that it is not the appropriate agency to resolve the issues presented by Intrado Comm for arbitration, thus requiring Intrado Comm to file this Petition to enforce its rights under the Act.^{10/}

ARGUMENT

The Commission should exercise its authority under Section 252(e)(5) of the Act to preempt the authority of the VSCC over Intrado Comm's arbitration request.^{11/} Under Section 252(e)(5), the Commission is required to preempt the jurisdiction of a state commission in any Section 252 proceeding or matter in which the state commission "fails to act to carry out its responsibility" under Section 252.^{12/} The Commission has expressly acknowledged its authority

^{7/} *Virginia Order* at 2, n.5.

^{8/} *Virginia Order* at 2-3 (citing to WT Docket No. 08-33, *Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone – Southeast, Inc. (collectively, Embarq)*, Memorandum Opinion and Order, DA 08-1330 (rel. June 4, 2008) ("*FCC Embarq Preemption Order*").

^{9/} *Virginia Order* at 3.

^{10/} While Intrado Comm and Verizon have continued their negotiations, several issues remain outstanding.

^{11/} 47 U.S.C. § 252(e)(5).

^{12/} 47 U.S.C. § 252(e)(5).

to preempt a state commission's jurisdiction,^{13/} and the prerequisites for Commission preemption have been met.

First, Intrado Comm's arbitration request was filed pursuant to Section 252(b), which gives Intrado Comm the right to file for arbitration from the 135th to the 160th day after Verizon received Intrado Comm's negotiation request.^{14/} As the *Virginia Order* acknowledges, Intrado Comm's petition for arbitration was filed pursuant to Section 252(b).^{15/}

Second, the VSCC has "responsibility" under Section 252 to arbitrate and resolve any open issues in connection with interconnection negotiations once requested to do so.^{16/} The VSCC itself acknowledges that it is required to "discharge the responsibilities of state commissions pursuant to the Telecommunications Act," which includes "the arbitration of interconnection agreements."^{17/} There is no question that resolution of Intrado Comm's arbitration request is within the VSCC's "responsibility" under the Act.

Third, the VSCC failed to "act to carry out its responsibility" under Section 252 when it refused to arbitrate the disputed issues between Intrado Comm and Verizon in accordance with the mandates set forth in Sections 251 and 252.^{18/} Instead, the VSCC explicitly deferred the outstanding issues to this Commission for resolution. The VSCC's determination to defer action

^{13/} See, e.g., *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 1285 (1996) ("*Local Competition Order*") (intervening history omitted), *aff'd by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

^{14/} 47 U.S.C. § 252(b)(1); see *supra* note 6 (stating the relevant arbitration window for Intrado Comm's request).

^{15/} *Virginia Order* at 1 (noting that Intrado Comm "filed a Petition for Arbitration ("Petition") with the State Corporation Commission ("Commission") pursuant to 47 U.S.C. § 252(b)(1)").

^{16/} 47 U.S.C. § 252(b)(1); see also *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385 (1999) (finding that Section 252 of the Act entrusts state commissions jurisdiction over interconnection agreements); *Global Naps, Inc. v. FCC*, 291 F.3d 832, 838 (D.C. Cir. 2002) (noting that it is "the state agency's responsibility to make a determination – that is, to mediate, to arbitrate, to approve, and (possibly) to interpret and enforce an interconnection agreement").

^{17/} *Virginia Order* at 2.

^{18/} 47 U.S.C. § 252(e)(6).

in a proceeding within its statutory authority is equivalent to a “failure to act” for purposes of Section 252(e)(5), as this Commission recently found in connection with Intrado Comm’s request for preemption of the VSCC’s failure to act with respect to Intrado Comm’s interconnection arbitration with Embarq.^{19/}

Fourth, the Commission has exercised its preemption authority based on similar actions by the VSCC on numerous other occasions, including Intrado Comm’s interconnection arbitration with Embarq in Virginia, which is based on a similar set of facts.^{20/} Only when a state agency “actually makes a determination” under Section 252 can the Commission deny a request for preemption.^{21/} The VSCC’s outright dismissal “for the express purpose of enabling the parties to proceed before this Commission” indicates that the VSCC “failed to carry out its section 252 responsibilities” with respect to Intrado Comm’s petition for arbitration.^{22/}

Accordingly, preemption is appropriate under Section 252(e)(5).

^{19/} *FCC Embarq Preemption Order* ¶ 4 (finding “that the Virginia Commission failed to carry out its section 252 responsibilities in this case”).

^{20/} See, e.g., *Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, 15 FCC Rcd 11277 (2000); *Petition of WorldCom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996 and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, 16 FCC Rcd 6224 (2001); *Petition of Cavalier Telephone, LLC Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Arbitration*, 18 FCC Rcd 1558 (2003) (“*Cavalier Preemption Order*”); see also generally *FCC Embarq Preemption Order*.

^{21/} *Global NAPs, Inc. v. FCC*, 291 F.3d 832, 836 (D.C. Cir. 2002).


^{22/} *Cavalier Preemption Order* ¶ 6; *Petition of KMC Telecom of Virginia, Inc., KMC Telecom V of Virginia, Inc., and KMC Data LLC Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Sprint*, 20 FCC Rcd 7542, ¶ 5 (2005).

CONCLUSION

For the foregoing reasons, Intrado Comm respectfully requests that the Commission preempt the jurisdiction of the Virginia State Corporation Commission and arbitrate the remaining interconnection disputes between Intrado Comm and Verizon.

Respectfully submitted,

**INTRADO COMMUNICATIONS OF
VIRGINIA INC.**



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Dated: July 18, 2008

Its Attorneys

CERTIFICATE OF SERVICE

I, Angela Collins, hereby certify that on this 18th day of June, 2008, I served true and correct copies of the foregoing Petition of Intrado Communications of Virginia Inc. on the following via the method indicated:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554
Via Hand Delivery

Joel Peck
Clerk
Virginia State Corporation Commission
1300 East Main Street
Richmond, VA 23219
Re: CASE No. PUC-2008-00021
Via Federal Express

Lydia R. Pulley, General Counsel
Jennifer McClellan, Regulatory Counsel
Verizon Virginia Inc.
600 East Main Street
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Angela Collins

ATTACHMENT “1”

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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Pursuant to Section 252(e)(5) of the Communications
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AFFIDAVIT OF THOMAS HICKS

I, Thomas Hicks, state as follows:

1. I am employed by Intrado Inc. as Director – Carrier Relations. I also serve in the same role for Intrado Inc.'s telecommunications affiliate, Intrado Communications Inc., which is the parent company of Intrado Communications of Virginia Inc. ("Intrado Comm"). My business address is 1601 Dry Creek Drive, Longmont, CO, 80503. I have been employed by Intrado Inc. and its affiliates since 2004. I am responsible for Intrado Comm's carrier relations with incumbent local exchange carriers ("ILECs"), such as Verizon South Inc. and Verizon Virginia Inc. (collectively, "Verizon"), competitive local exchange carriers ("CLECs"), wireless providers, and Voice over Internet Protocol providers.

2. I have knowledge of the facts set forth herein and I make this affidavit in support of Intrado Comm's Petition to the Federal Communications Commission to preempt the jurisdiction of the Virginia State Corporation Commission ("VSCC") with respect to the arbitration of an interconnection agreement between Intrado Comm and Verizon for the Commonwealth of Virginia.

3. Intrado Comm has authority to operate as a competitive local exchange carrier in the Commonwealth of Virginia and holds Certificate of Public Convenience and Necessity No. T-578.

4. Verizon is an incumbent local exchange carrier providing local telephone services in the Commonwealth of Virginia pursuant to authority granted by the VSCC.

5. In May 2007, Intrado Comm requested negotiation of an interconnection agreement with Verizon pursuant to Intrado Comm's rights under Section 251 of the Communications Act of 1934, as amended ("Act").

6. For purposes of the statutory deadlines, there is agreement among the Parties that interconnection negotiations commenced on September 27, 2007, resulting in the state commission arbitration window opening on February 9, 2008 and closing on March 5, 2008.

7. In response to Intrado Comm's negotiation request, Verizon proposed using its template interconnection agreement as the starting point for the Parties' negotiations.

8. After several email exchanges and an initial meet-and-greet conference call, Intrado Comm provided Verizon with an initial mark-up of the template agreement in September 2007 and additional revisions in October 2007.

9. On January 16, 2008, Verizon provided a response to the Intrado Comm September and October drafts. Verizon also noted its position that Intrado Comm may not be eligible for interconnection pursuant Section 251(c) of the Act for all of the services intended to be offered by Intrado Comm.

10. Intrado Comm sent back a further revised draft in February 2008. Subsequently, the Parties held several conference calls to discuss Intrado Comm's proposed revisions. The Parties were able to resolve several issues during the calls, and each Party agreed to "take back"

many other issues for further consideration. After providing Verizon with the results of its "take back" issues, Intrado Comm provided Verizon with a further revised draft in early March 2008. Verizon did not provide Intrado Comm with a response to Intrado Comm's proposed language or responses to any of the Verizon "take back" issues from the February conference calls.

11. On March 5, 2008, Intrado Comm filed a Petition for Arbitration with the VSCC. Intrado Comm's Petition for Arbitration designated as an issue for arbitration whether Intrado Comm is entitled to Section 251(c) interconnection and Section 252 arbitration. Intrado Comm also designated several substantive issues raised by Verizon's template interconnection agreement. Intrado Comm also filed for arbitration against Verizon entities in Ohio, Florida, North Carolina, West Virginia, Delaware, and Maryland.

12. On March 31, 2008, Verizon filed its Response to Intrado Comm's Petition for Arbitration as well as a Motion to Hold in Abeyance Intrado Comm's Petition for Arbitration. Verizon later withdrew its Motion to Hold in Abeyance pending the Parties' agreement to stay the arbitration period for 60 days to allow for further negotiations between the Parties. During that 60-day period, the Parties were able to resolve an additional thirteen (13) issues.

13. On June 16, 2008, the VSCC issued a decision deferring the issue of whether Intrado Comm is entitled to Section 251(c) interconnection (as well as all other issues designated for arbitration by Intrado Comm) to the Federal Communications Commission. A copy of the VSCC's Order is attached to this Petition as Attachment 2.

14. The Parties are continuing to negotiate in connection with the pending arbitration proceedings in other states. It is Intrado Comm's understanding that these negotiations (and the resulting resolved issues) would also apply to the Parties' Virginia interconnection agreement.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

A handwritten signature in cursive script, reading "Thomas Hicks". The signature is written in dark ink and is positioned above a horizontal line.

Thomas Hicks
Director - Carrier Relations
Intrado Communications of Virginia Inc.

ATTACHMENT “2”

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, JUNE 16, 2008

2008 JUN 15 P 2:39

PETITION OF

INTRADO COMMUNICATIONS OF VIRGINIA, INC.

CASE NO. PUC-2008-00021

For Arbitration to Establish an Interconnection
Agreement with Verizon Virginia Inc. and
Verizon South Inc. under Section 252(b)
of the Telecommunications Act of 1996

ORDER OF DISMISSAL

On March 5, 2008, Intrado Communications of Virginia, Inc. ("Intrado"), filed a Petition for Arbitration ("Petition") with the State Corporation Commission ("Commission") pursuant to 47 U.S.C. § 252(b)(1) ("Telecommunications Act"),¹ asking the Commission to resolve the disputes arising from Intrado's attempts to negotiate an interconnection agreement ("ICA") with Verizon Virginia Inc., and Verizon South Inc., (collectively "Verizon").

In its Petition, Intrado requests that the Commission arbitrate the disputed issues identified in the attachments to its Petition, adopt Intrado's proposed contract language on those issues and order the parties to sign an ICA reflecting Intrado's proposed language and the parties' agreed-upon language.

On March 31, 2008, Verizon filed its response to Intrado's Petition ("Response") together with its Motion to Hold in Abeyance ("Motion"). In both its Response and its Motion, Verizon noted a crucial threshold matter of whether Intrado is a telecommunications carrier entitled to interconnection and arbitration within the scope of § 251(c) of the Telecommunications Act.

¹ 47 U.S.C. § 151 *et seq.*

Verizon's Motion asks that the Commission hold this proceeding in abeyance while the Federal Communications Commission ("FCC") is resolving the threshold issue—whether Intrado is furnishing telecommunications services that entitle it to interconnection and arbitration as a telecommunications carrier as contemplated by §§ 251(c) and 252 of the Telecommunications Act.²

NOW THE COMMISSION, upon consideration of this matter, finds that the Petition should be dismissed.

Section 56-265.4:4 B 4 of the Code of Virginia provides that the Commission shall discharge the responsibilities of state commissions pursuant to the Telecommunications Act and applicable law and regulations, including, but not limited to, the arbitration of interconnection agreements. However, the statute goes on to provide that the Commission may exercise its discretion to defer selected issues.

In this case, we find there is a threshold issue that should be determined by the FCC. Therefore, we believe the FCC is the more appropriate agency to determine whether Intrado is entitled to interconnection pursuant to § 251 (c) of the Telecommunications Act.

We note further that the Commission chose not to resolve the same threshold issue regarding Intrado's entitlement to interconnection in Case No. PUC-2007-00112³, choosing instead to dismiss the arbitration petition so that this crucial federal question could be resolved by the FCC, the more appropriate agency for such a statutory interpretation of jurisdiction. The

² See Motion at 1-2. Page 3 of the Motion also refers to Intrado's petition seeking FCC arbitration of the earlier Embarq matter that the Commission had dismissed February 14, 2008, in Case No. PUC-2007-00112. See also FCC Docket No. 08-33.

³ See *Petition of Intrado Communications of Virginia, Inc. For Arbitration to Establish Interconnection Agreement with Central Telephone Company of Virginia, d/b/a Embarq and United Telephone—Southeast, Inc., d/b/a Embarq, under Section 252(b) of the Telecommunications Act of 1966*, Case No. PUC-2007-00112, Final Order, February 14, 2008.

FCC has docketed that matter as Docket WC No. 08-33 and has now assumed jurisdiction over that dispute.⁴ Nothing distinguishes the jurisdictional nature of this arbitration petition from the Embarq matter above. The FCC has initiated its proceeding to resolve the threshold issue in the Embarq matter, and should be able to apply a similar determination for these two parties.

Therefore, based upon the potential conflict that may arise should the Commission attempt to determine the rights and responsibilities of the parties under state law or through application of the federal standards embodied in the Telecommunications Act, we find that this arbitration proceeding should be deferred to the FCC.⁵

Moreover, dismissal of this matter does not prevent the parties from voluntarily pursuing a mutually agreeable ICA or other commercial agreement that meets the needs of both without involving the mandatory and tight arbitration schedule that the Telecommunications Act imposes upon parties and upon state commissions.

Accordingly, IT IS ORDERED THAT the Motion to Hold in Abeyance is denied and the Petition is hereby dismissed. There being nothing further to come before the Commission, the papers shall be transferred to the files for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Cherie R. Kiser, Esquire, Angela F. Collins, Esquire, Rand McQuinn, Esquire, Cahill Gordon & Reindel LLP, 1990 K Street, N.W., Suite 950, Washington, DC 20006; Lydia R. Pulley, Vice President, General Counsel, and Secretary, and Jennifer L. McClellan, Regulatory Counsel,

⁴ See *Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone—Southeast, Inc. (collectively, "Embarq")*, WC Docket No. 08-33 Memorandum Opinion and Order, released June 4, 2008.

⁵ We note that until such time as the threshold jurisdictional issue is resolved, it would be inappropriate to resolve the other disputed issues. Therefore, we will defer resolution of all issues in Intrado's Petition to the FCC.

Verizon Virginia Inc., 600 East Main Street, Suite 1100, Richmond, Virginia 23219-2441; and
the Commission's Office of General Counsel and Division of Communications.